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| 09/774,458      | 01/31/2001  | Fred J. Zustak       | SNY-P4143           | 3440             |

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| EXAMINER |
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BELIVEAU, SCOTT E

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| ART UNIT | PAPER NUMBER |
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2614

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/774,458

Applicant(s)

ZUSTAK ET AL.

Examiner

Scott Beliveau

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The declaration filed on 05 May 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Novak reference. Harold Fujii is not a qualified party to make a declaration for the instant application under 37 CFR 1.131(a). Harold Fujii, in light of the evidence of record, is not the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or a party qualified under § 1.42, 1.43, or 1.47 as no evidence as to death, insanity, legal incapacity, or inability to reach the inventors or refusal of the inventors to sign has been provided. Accordingly, no consideration on the merits is being given to the declaration, as it was not executed by a qualified party.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments appear to be directed towards the combined Novak and Boyer references failing to particularly teach or suggest the limitations identified as distinctions/items 1-4 in the applicant's arguments and in particular the failure of the combined references to utilize an "actual television channel" so as to access distributed user content. With respect to the particular usage of an "actual channel", it is unclear as to what in light of the specification is meant by an "actual channel" as opposed to simply a television channel or leased television channel used predominantly throughout the specification. The only reference within the specification that utilizes the phrase "actual channel" appears to do

so interchangeably with the term “virtual channel” (IA: Page 14, Lines 8-16; Page 16, Line 25-30). Applicants appear to be arguing that Novak reference is not an “actual channel” because it simply serves to link a user to a website that is multicasting content. While the reference discloses that a possible option, the examiner respectfully disagrees that the reference is limited to operating in that fashion as the reference further teaches and illustrates (Figure 9) that the content can be distributed over a television channel. Novak discloses the particular usage of conventional television broadcast channels and synthetic channels and sets forth that the distinction between the channels relates to the ability of the user to control the content distributed over a synthetic channel. Both conventional channels and synthetic channels are disclosed as requiring for the STB to tune to the particular broadcast/multicast television channel in order to receive and render the program (Para. [0026], [0033], [0060], [0069], [0070], [0075], [0084], and [0086]). Furthermore, the reference teaches that content derived from web-sites is still distributed via conventional television channels (Para. [0030]). Accordingly, it is the examiner’s opinion that the Novak reference meets the limitation pertaining to the particular usage of “actual channels” in light of the specification and is not limited to only distributing a “URL address” for subsequent program access.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
5. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novak (US Pub No. 2002/0104099 A1) in view Boyer (US Pub No. 2003/0066085 A1).

In consideration of claim 1, the Novak reference discloses a “method of providing a channel of television programming to a class of subscribers” (Abstract). The method comprises a web-site locatable at any suitable server (Para. [0040] which may be part of an interactive television system (Para. [0025]) “receiving programming content from a first subscriber” wherein “the programming content” is “transmitted electronically from the first subscriber . . . via a first subscriber's set-top box” [122] (Para. [0056], [0061], and [0078]). The received programming content is subsequently “multicast” from the web-site or cable provider (Para. [0033], [0035], [0060], and [0084]) to the “class of subscribers” such as those belonging to a class of people with a common interest for the delivery of the uploaded material such that the “multicasting is carried out by addressing a set-top box corresponding to each subscriber belonging to the class of subscribers” or group of subscribers interested in the material with information necessary to access the material (Figure 11; Para. [0080] – [0082], [0084], and [0089]). Subsequently, the “set-top box” [122] “accesses the

programming content by accessing a specified actual television channel” (ex. channel 28 as illustrated in Figure 9) associated with the distribution of the program material (Para. [0026], [0033], [0060], [0069], [0070], [0075], [0084], and [0086]). As aforementioned, the Novak reference discloses that the particular web site [124] may be located any suitable server accessible via the internet (Para. [0040]), however, the reference does not explicitly disclose nor preclude that the web-site server does not reside at a “television service provider headend”.

Figure 3 of the Boyer et al. reference provides evidence that it is common knowledge for a “television service provider headend” [88] to comprise a server for a web-site.

Accordingly, it would have been obvious to one having ordinary skill in the art to modify the Novak reference such that the web-site server resides at a “television service provider headend” such that media to/from the subscriber web-site are being distributed “at television service provider” for the inherent advantages associated with such including but not limited to providing an efficient means to distribute Internet based content based upon the relative proximity between the subscriber and the cable headend.

Claims 2-4 are rejected wherein the “programming content is received from the first subscriber by an upload to the service provider headend via a dial-up narrowband telephone communication link” or “via a wideband telephone communication link”, or “via a cable modem communication link” (Novak: Para. [0030]).

Claim 5 is rejected wherein the “multicasting comprises multicasting the programming content over a leased digital television channel” or PPV channel (Novak: Para. [0081]).

In consideration of claim 6, the Novak reference discloses that the “multicasting is carried out by: encrypting the programming content using an encryption key . . . and broadcasting the encrypted programming content to the class of subscribers” (Para. [0082]). The reference, however, does not explicitly set forth “providing the decryption key to the class of subscribers”. However, this limitation is believed to be implicit to the reference as the distributed encrypted content would require a means of “providing the decryption key” associated with decrypting the content such that the provide a means by which the distributed encrypted content is decrypted/unscrambled for viewing based upon symmetric and/or public-private keys encryption/decryption techniques.

Claim 7 is rejected wherein the “class of subscribers comprise one of a family, affiliates of a corporate entity, and people with a common interest” (Novak: Para. [0026], [0058], [0070], and [0080]).

Claim 8 is rejected wherein “the programming content is received from the first subscriber by an upload to the service provider headend of content from one of a still camera, a video camera, a video tape player, an audio tape player, a CD player, a PVR and a scanner” (Novak: Para. [0039] and [0061]).

Claim 9 is rejected as aforementioned, wherein the Novak reference discloses a “method of providing a channel of television programming to a class of subscribers” (Abstract), wherein “the class of subscribers comprise one of a family, affiliates of a corporate entity, and people with a common interest, the method comprising in combination” (Para. [0026], [0058], [0070], and [0080]). The method comprises a web-site locatable at any suitable server (Para. [0040]) which may be part of an interactive television system (Para. [0025]) that

“receives programming content from a first subscriber” wherein “the programming content” is “transmitted electronically from the first subscriber. . . via a first subscriber's set-top box” [122] (Para. [0056], [0061], and [0078]) though “an upload . . . via one of a dial-up narrowband telephone communication link, a wideband telephone communication link and a cable modem communication link” (Para. [0030]). The received programming content is subsequently “multicast” (Para. [0060] and [0084]) from the web-site or cable provider (Para. [0033], [0035], [0060], and [0084]) “over a leased digital television channel” (Para. [0081] and [0089]) to the “class of subscribers” such as those belonging to a class of people with a common interest for the delivery of the uploaded material such that the “multicasting is carried out by addressing a set-top box corresponding to each subscriber belonging to the class of subscribers” or group of subscribers interested in the material with information necessary to access the material (Figure 11; Para. [0080] – [0082], [0084], and [0089]).

While the reference discloses that the “multicasting is carried out by: encrypting the programming content using an encryption key . . . and broadcasting the encrypted programming content to the class of subscribers over a specified actual television channel” (Figure 9; Para. [0026], [0033], [0060], [0069], [0070], [0075], [0082], [0084], and [0086]). The reference, however, does not explicitly set forth “providing the decryption key to the class of subscribers”. However, this limitation is believed to be implicit to the reference as the distributed encrypted content would require a means of “providing the decryption key” associated with decrypting the content such that the provide a means by which the distributed encrypted content is decrypted/unscrambled for viewing based upon symmetric and/or public-private keys encryption/decryption techniques.



With respect to the particular limitation such that the programming content is uploaded/downloaded from the “television service provider headend”, as aforementioned, the Novak reference discloses that the particular web site [124] may be located any suitable server accessible via the internet (Para. [0040]), however, the reference does not explicitly disclose nor preclude that the web-site server does not reside at a “television service provider headend”. Figure 3 of the Boyer et al. reference provides evidence that it is common knowledge for a “television service provider headend” [88] to comprise a server for a web-site. Accordingly, it would have been obvious to one having ordinary skill in the art to modify the Novak reference such that the web-site server resides at a “television service provider headend” such that media to/from the subscriber web-site are being distributed “at television service provider” for the inherent advantages associated with such including but not limited to providing an efficient means to distribute Internet based content based upon the relative proximity between the subscriber and the cable headend.

In consideration of claims 10 and 11, the Novak reference discloses a “method of providing a channel of television programming to a class of subscribers” (Abstract). The method comprises “establishing the class of subscribers” (Para. [0058]) whereby those subscribers may “lease a television channel from a television service provider” (Para. [0081]) in order to access uploaded or “electronically transmitted programming content from a first subscriber to the service provider . . . from the first subscriber’s set-top box” (Para. [0056], [0061], and [0078]). Once uploaded, the “first subscriber being one of the class of subscribers” (ex. family member) “schedules playback of the programming content” (Figures 6-7; Para. [0062] – [0067]) whereupon it is subsequently “multicast . . . over the leased

television channel to the class of subscribers” such that the “multicasting is carried out by addressing a set-top box corresponding to each subscriber belonging to the class of subscribers” or group of subscribers interested in the material with information necessary to access the material (Figure 11; Para. [0080] – [0082], [0084], and [0089]). As aforementioned, the “set-top box” [122] subsequently “accesses the programming content by accessing a specified actual television channel” (ex. channel 28 as illustrated in Figure 9) associated with the distribution of the program material (Para. [0026], [0033], [0060], [0069], [0070], [0075], [0084], and [0086]).

As aforementioned, the Novak reference is not limiting with respect to the location of the upload web-site such that the web-site server does not reside at a “television service provider headend”. Figure 3 of the Boyer et al. reference provides evidence that it is common knowledge for a “service provider headend” [88] to comprise a server for a web-site. Accordingly, it would have been obvious to one having ordinary skill in the art to modify the Novak reference such that the web-site server resides at a “television service provider headend” such that media to/from the subscriber web-site is distributed to/from the “service provider headend” for the inherent advantages associated with such including but not limited to providing an efficient means to distribute Internet based content based upon the relative proximity between the subscriber and the cable headend.

In consideration of claim 12, as aforementioned, the Novak reference discloses that the “multicasting is carried out by: encrypting the programming content using an encryption key . . . and broadcasting the encrypted programming content to the class of subscribers” (Para. [0082]). The reference, however, does not explicitly set forth “providing the decryption key

to the class of subscribers”. However, this limitation is believed to be implicit to the reference as the distributed encrypted content would require a means of “providing the decryption key” associated with decrypting the content such that the provide a means by which the distributed encrypted content is decrypted/unscrambled for viewing based upon symmetric and/or public-private keys encryption/decryption techniques.

Claim 13 is rejected wherein the “television channel comprises a digital television channel” associated with an IP broadcast (Novak: Para. [0069] and [0089]).

Claim 14 is rejected wherein the “programming content is received from the first subscriber by an upload to a service provider headend via one of a dial-up narrowband telephone communication link, a via a wideband telephone communication link and a cable modem communication link” (Novak: Para. [0030]).

Claim 15 is rejected wherein “the programming content is received from the first subscriber by an upload to the service provider headend of content from one of a still camera, a video camera, a video tape player, an audio tape player, a CD player, a PVR and a scanner” (Novak: Para. [0039] and [0061]).

In consideration of claim 16, the Novak reference discloses the particular usage of an “arbiter” (Figure 7) further operable to “removing the programming content by: requesting a schedule arbiter to remove the content and the schedule arbiter removing the content” (Para. [0065]) so as to ensure that multiple programs are not scheduled for the same time slot.

Claim 17 is rejected wherein the “scheduling is carried out by a schedule arbiter” (Novak: Para. [0066]).

Claim 18 is rejected as aforementioned, wherein the Novak reference discloses a “method of providing a channel of television programming to a class of subscribers” (Abstract), wherein “the class of subscribers comprise one of a family, affiliates of a corporate entity, and people with a common interest, the method comprising in combination” (Para. [0026], [0058], [0070], and [0080]). The method comprises “receiving programming content from a first subscriber” wherein “the programming content” is “transmitted electronically from the first subscriber . . . via a first subscriber's set-top box” [122] (Para. [0056], [0061], and [0078]) though “one of a dial-up narrowband telephone communication link, a wideband telephone communication link and a cable modem communication link” (Para. [0030]). Once uploaded, the “first subscriber being one of the class of subscribers” (ex. family member) uses a “schedule arbiter to schedule playback of the programming content” (Figures 6-7; Para. [0062] – [0067]) and to “remove the programming content by: requesting a schedule arbiter to remove the content and the schedule arbiter removing the content” (Para. [0065]) so as to ensure that multiple programs are not scheduled for the same time slot. Once the schedule has been established, the “programming content” initially received by the “set-top box” [122] from “one of a still camera, a video camera, a video tape player, an audio tape player, a CD players, a PVR and a scanner” (Para. [0039] and [0061]), is subsequently “multicast . . . over the leased television channel to the class of subscribers” by “addressing a set-top box corresponding to each subscriber belonging to the class of subscribers for transmission of the content” (Figure 11; Para. [0060], [0080] – [0082], [0084], and [0089]).

While the Novak reference discloses that the “multicasting is carried out by: encrypting the programming content using an encryption key . . . and broadcasting the encrypted

programming content to the class of subscribers over a specified actual television channel” (Figure 9; Para. [0026], [0033], [0060], [0069], [0070], [0075], [0082], [0084], and [0086]). The reference, however, does not explicitly set forth “providing the decryption key to the class of subscribers”. However, this limitation is believed to be implicit to the reference as the distributed encrypted content would require a means of “providing the decryption key” associated with decrypting the content such that the provide a means by which the distributed encrypted content is decrypted/unscrambled for viewing based upon symmetric and/or public-private keys encryption/decryption techniques.

With respect to the particular limitation such that the programming content is uploaded/downloaded from the “television service provider headend”, as aforementioned, the Novak reference discloses that the particular web site [124] may be located any suitable server accessible via the internet (Para. [0040]), however, the reference does not explicitly disclose nor preclude that the web-site server does not reside at a “television service provider headend”. Figure 3 of the Boyer et al. reference provides evidence that it is common knowledge for a “television service provider headend” [88] to comprise a server for a web-site. Accordingly, it would have been obvious to one having ordinary skill in the art to modify the Novak reference such that the web-site server resides at a “television service provider headend” such that media to/from the subscriber web-site are being distributed “at television service provider” for the inherent advantages associated with such including but not limited to providing an efficient means to distribute Internet based content based upon the relative proximity between the subscriber and the cable headend.

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Claim 19 is rejected in view of the combined references wherein the “programming content is stored on a server” or web-server that “resides at the service provider headend” (Boyer et al.: Figure 3).

Claim 20 is rejected in view of the combined references wherein the “programming content is stored on a server” or web-server that “resides at the service provider headend” (Boyer et al.: Figure 3). As set forth in the Novak reference, the “server” associated with the web-site is “designated for storage of content for broadcast over leased television channels” of the cable provider (Novak: Para. [0079], [0081], [0085], and [0086]).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as follows. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made.

- The Liwerant et al. (US Pub No. 2002/0056123 A1) reference discloses a system and method for uploading and sharing streamed media.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 571-272-7343. The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB  
May 11, 2005



**JOHN MILLER**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**